



Section 11A of the Industrial Disputes Act, 1947 – A shield for Workman Against Unfair Disciplinary Proceedings

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ABSTRACT

The delinquent workman who is charged for misconduct liable for punishment as prescribed in the Standing Orders of any organization. While various types of punishments listed in the Standing Orders, there is no adequate guide line to equate the punishment with the misconduct proved during the disciplinary proceedings. Due to this ambiguity, most of the times the punishment was not proportionate to the gravity of the misconduct either due to unfettered power vested with the employer. Due to this absolute power, the delinquent workman was imposed with maximum punishment of dismissal or discharge in the process disciplinary proceedings. In this context, this paper attempts to discuss the unfair approach of the disciplinary authority while awarding the punishment and how Section 11 of the Industrial Disputes Act, 1947 acts as a shield to protect such victims from unfair dismissal or discharge.

KEYWORDS: Delinquent Workman, Misconduct, Discharge, Dismissal, Domestic Enquiry, Standing Orders

Introduction

The vital part in the course of disciplinary proceedings is imposing the punishment to delinquent workman against whom the alleged charges are proved. The disciplinary authority is empowered to punish the delinquent workman as per the guidelines of the Certified Standing Orders of the organization. A Division Bench of the Gujarat High Court in *RM Parmar Vs Gujarat* (1982) Lab IC 1031, 1034-35 (Guj) (DB), held that the main purpose of a punishment is to correct the fault of the delinquent workman concerned by making him more alert in the future and to hold out of warning to the other workmen to be careful in the discharge of their duties so that they do not expose themselves to similar punishment. And the approach to be made is the approach parents make towards an erring or misguided child. However, most of the times the punishment is shockingly disproportionate due to which the delinquent workman is dismissed from the services. Such punishment may be imposed by the disciplinary authority with intent to victimize the delinquent workman which amounts to unfair labour practice in the context of Labour Legislations.

Object of Punishment

The object of punishment is to prevent the workmen committing the misconduct and to maintain the discipline in the organization. The punishment is intended to prevent the delinquent workman from repeating the offence and to prevent other workmen of the organization from committing similar acts. There are various theories of punishment namely retributive, deterrent or reformatory in nature. Hence, considering the gravity and severity of the misconduct the punishment may be any of the above one or combination two or more theories. Morale is one of the key business enablers to build and maintain a good organizational climate. Workmen's morale is one of the critical factors for effective output and higher productivity. Erring workmen are like rotten apples which will spoil the other apples in the basket. Hence, it is the prerogative of the employer to deal such workmen through a structured disciplinary proceeding in a neutral and reasonable manner and impose the punishment considering the gravity of the misconduct. This clearly reveals that the main purpose of punishment is to maintain discipline and sustain a good social order in the organization. The idea of imposing the punishment is to correct the fault of the workman concerned by making him more cautious in future and send a warning signal to other workmen in the organization. If an workman misbehaves or misconducts in an organization, it is not only the duty of the employer but moral and social obligation to express his resentment on such misbehavior and punish the delinquent workman so that the objectionable conduct will not be repeated and other workmen refrain from behaving in that manner. It is also expected as head of the organization that while imposing punishment he should not act with a malafide, vindictive or biased manner. Though the Standing Orders of the organization prescribe various punishments, the responsibility of the employer or the punishing authority to map the appropriate punishment with the misconduct proved in the domestic enquiry. In other

words, the punishment should be commensurate with the gravity of the charge. If lesser punishment could be inflicted without prejudice to the interest of the organization, the employer should deal it with great care and he is not expected to inflict maximum punishment because it will be perceived as victimization against the delinquent workman. On the other hand, if the punishing authority while inflicting the punishment has followed and applied the principles of natural justice and has come to the conclusion, taking into consideration the facts and circumstances of the case that it is in the interest of the organization that the delinquent workman must be dismissed, he can do so and the delinquent workman also has no other option but to accept the said decision. The idea of punishment also by its very nature of things includes within its sphere, attempts and efforts to improve conduct of the offender. In the context of true ethics of punishment in the organization, it is expected that the punishing authority must act in the right spirit and the delinquent workman and the trade union representatives also appreciate and accept the same. It is sure that it will go a long way in easing the unrest and also strengthen good relation between the workman and employer.

Types of Punishment

Imposing of punishment against the delinquent workman is the last stage in the disciplinary proceedings. On receipt of the enquiry report from the enquiry officer and the reply from the delinquent workman for the second show cause notice on the proposed punishment, the disciplinary authority will impose the punishment. Before passing the order of punishment, the disciplinary authority shall take into account the gravity of the misconduct and the extenuating circumstances, if any, and any other factors that may be having relevance in the facts and circumstances of the case. Considering all these factors, the disciplinary authority shall decide the quantum of the punishment.

To decide the quantum of punishment, the disciplinary authority shall refer the types of punishment enumerated in the Certified Standing Orders of the organization or in the absence of the same, the Model Standing Orders prescribed under the Industrial Employment (Standing Orders) Act, 1946 to be relied on. The various types of punishments are discussed as under:

(a) Warning

Warning is a minor punishment which is administered to a delinquent workman in writing for some blameworthy act or omission. Since warning is a punishment, it has to be administered to a delinquent workman after giving him an opportunity to explain the act or omission alleged against him and after considering his explanation. In *Shankara Pillai Vs Kerala State* (1960) 1 LLJ 621 (Ker), while discussing the principles relating to the past record being taken into consideration have been discussed by the Kerala High Court, it was stated that though the penalty of warning does not materially affect the concerned delinquent workman, it can be a material factor to be taken into consideration in future disciplinary proceedings.

(b) Fine

Fine is a pecuniary punishment that may be inflicted by the employer against the delinquent workman for some blameworthy act or omission. The Certified Standing Orders of the establishment provides for the imposition of fines subject to Section 8 of the Payment of Wages Act, 1936. In other words, if the employer imposes fine against a delinquent workman, he can do so only after fulfilling the conditions mentioned in Section 8 of the Payment of Wages Act, 1936.

(c) Withholding of Increments

This punishment is serious in nature since it affects the earning of the delinquent workman. Moreover, it will affect the morale of the delinquent workman because when he is deprived of the annual increment he will be drawing lesser wages than the workmen of similar grade. Hence, this punishment can be imposed only for the proved misconducts after giving a fair opportunity to the delinquent workman to explain his conduct.

(d) Demotion

Demotion is the negative of promotion whereby the delinquent workman is downgraded from the present job to the lower job. This punishment is similar to 'reduction in rank' as envisaged by Article 311 of the Constitution of India. It is a severer degree of punishment and hence this punishment to be inflicted in accordance with the degree of gravity of the misconduct proved against the delinquent workman.

(e) Suspension

Suspension is another type of punishment that can be imposed on a delinquent workman for a specified period as enumerated in the contract of service or the Certified Standing Orders of the establishment or Model Standing Orders, as the case may be. This punishment is also of a serious nature and hence the same can be imposed only after finding the delinquent workman guilty of misconduct committed by him. In the matter of Balvantrai Ratilal Patel Vs State of Maharashtra (1968) 2 LLJ 700, 703 (SC); Hotel Imperial Vs Hotel Worker's Union (1959) 2 LLJ 544 (SC); T Cajee Vs Jormanik Seim (1961) 1 LLJ 652 (SC) and VP Gindronia Vs State of Madhya Pradesh (1970) 2 LLJ 143, 146 (SC), the Supreme Court explained the characteristics of suspension that the effect of the suspension is that the relationship of the master and servant is temporarily suspended with the consequence that the servant is not bound to render service and the master is not bound to pay. In other words, the workman will not be entitled to wages for the period of suspension.

(f) Discharge

Discharge of a workman from service as punishment is known as 'major punishment'. In this punishment, the contract of employment is determined and the employer-workman relationship ceases to exist. Discharge as a punishment is milder than the extreme punishment of dismissal though like dismissal, it also puts the contract of service to an end. The difference between the discharge and dismissal has been demarcated by Patna and Delhi High Courts in Calcutta Chemical Co Ltd Vs DK Barman 1969 Lab IC 1498, 1506 (Pat) (DB) and Krishnan Dev Puri Vs Union of India (1984) 1 LLJ 197, 203 (Del) (DB) stating that in case of dismissal, the workman loses a number of benefits whereas in case of discharge only the contract of service is terminated from a particular date and the workman is not deprived of the benefits accruing to him up to that date.

(g) Dismissal

Dismissal is the ultimate and the extreme punishment imposed on a delinquent workman for an act of misconduct. In bringing the service of an industrial workman to an end by way of dismissal, the employer has to comply with the requirements of the procedure laid down in the Certified Standing Orders or the Model Standing Orders applicable to the establishment or with the principles of natural justice. To elaborate, a delinquent workman can be dismissed from the services only after giving him an opportunity to defend himself against the charges leveled against him by holding a fair and proper domestic enquiry. If the delinquent workman is found guilty of the charges by the enquiry officer, the employer will be justified to dismiss the said delinquent workman from the services.

Discussion

Implication of Section 11A of the Industrial Disputes Act, 1947

The objective of imposing punishment on the delinquent workman is to deter him from committing such misconduct in future and also it

serves a warning to the other workmen not to commit any misconduct. Imposing appropriate punishment to any delinquent workman for the misconduct committed is the prerogative of the employer in order to maintain the discipline in the industry and the industrial peace. At the same time it has to be noted that the punishment imposed should not be shockingly disproportionate with the act of misconduct which no reasonable employer would ever impose in like circumstances, that itself would lead to the inference of victimization or unfair labour practice which would vitiate the order of dismissal or discharge but by enacting Section 11A, the legislature has transferred the discretion of the employer in imposing punishment to the adjudicator. It is now the satisfaction of the industrial adjudicator to ultimately decide the quantum of punishment for proved acts or omissions of misconduct in cases of discharge or dismissal. If the tribunal is satisfied that the order of discharge or dismissal is not justified in any circumstances on the facts of a case, it has the power not only to set aside the order of punishment and direct the reinstatement with back wages, but it also has the power to impose certain conditions as it may deem fit and just and also to give relief to the workman including the award of lesser punishment in lieu of discharge or dismissal.

From the above, it is evident that the objective of introducing Section 11A in the Industrial Disputes Act, 1947 by virtue of its amendment in 1971 is to ensure that the –

- punishment imposed on the delinquent workman is appropriate and justified.
- the action of the employer is bonafide.
- the employer has not victimized the delinquent workman by using the shelter of disciplinary proceedings.
- the employer has not adopted any unfair labour practice.

Before getting into detailed discussion in the subject matter, it is appropriate to know the bare provisions of Section 11A of the Industrial Disputes Act, 1947 and the same is run as follows:

"11A: Power of Labour Courts, Tribunals and National Tribunals to give Appropriate Relief in case of Discharge or Dismissal of Workmen – Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require.

Provided that in any proceedings under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.

From the above bare provisions, it may be inferred that post enactment of Section 11A, undoubtedly the workman concerned is very much protected in terms of challenging the unfettered right of the employer to impose punishment of discharge or dismissal. Similarly, if the employer for any reasonable grounds is unable to conduct enquiry or if the enquiry conducted by the employer is found to be defective, the tribunal has to give an opportunity to the employer to adduce evidence before it to satisfy itself about the legality and validity of the order. In this process, it is open to the employee to adduce his evidence contra. On the other hand the scope of the jurisdiction of the tribunal is also not unfettered but limited to an extent of only when the findings arrived at the enquiry are perverse or the management is guilty of victimization, unfair labour practice or mala fides. Thus enactment of Section 11 A –

- ensures protection to the workman who suffers from the punishment of discharge or dismissal which is not proportionate to the misconduct.
- offers an opportunity for the employer to adduce evidence before the tribunal justifying his action.
- is a check measure enabling the tribunal to interfere only in the event the punishment imposed by the employer is shockingly disproportionate.

In the light of the above, let us discuss hereunder some of the landmark judgements of the Supreme Court and various High Courts upholding the decisions of the tribunals protecting the workmen from the unreasonable punishments of discharge or dismissal.

In *Bharat Heavy Electricals Limited Vs Presiding Officer, Additional Industrial Tribunal –cum- Additional Labour Court and Others*, 2002 LLR 255 (MP HC), it was held as follows:

“The penalty imposed by the disciplinary authority, in the facts and circumstances of the case, in our view, was disproportionate to the proved misconduct and, therefore, not justified. Having carefully considered the entire facts and circumstances of the case, we could not find any impropriety or illegality in the award of the Labour Court as confirmed by the learned Single Judge in modifying the punishment of dismissal from service to that of reinstatement into service as a fresh candidate in the post of Assistant Grade – I. The Labour Court, in our opinion, had exercised its discretionary power under Section 11-A judiciously and has given valid and cogent reasons for modifying the punishment.”

From the above, it may be interpreted that the Labour Court or the Industrial Tribunal can interfere when the punishment awarded is disproportionate to the proved guilt. Under such circumstances, the Labour Court is bound to give and should give its reasons in support of its decision. The Labour Court has very carefully examined the case within its jurisdiction by concurring with the conclusion of the management that the charges are proved. However, while considering the punishment, the Labour Court was of the view that the punishment of dismissal from service cannot be sustained. The Labour Court, after holding so, declared that the action of the management in imposing such a serious punishment is not proper and justified and therefore it modified the punishment of dismissal from service to that of reinstatement into service as a fresh candidate to the lower post. With this, the Labour Court and High Court have given a strong message to the management that if the punishment is shockingly disproportionate, the Labour Court or Tribunal interfere and set aside the order of dismissal and direct reinstatement of the workman. In the process, it also will give relief to the workman concerned by way of lesser punishment in lieu of the dismissal in line with Section 11A of the Industrial Disputes Act, 1947. At the same time, this Judgement gives a warning signal to the workman concerned and all the workmen at large that any workman commits misconduct affecting the discipline of the industrial establishment cannot be spared and appropriate punishment will be imposed on him as per the Certified Standing Orders of the industrial establishment.

In line with the above context, similar view has been taken by Allahabad High Court in the matter of *Rachhpal Singh Vs District Magistrate / Administrator, The Kisan Sahkari Chini Mills Ltd., and Others*, 2002 LLR 1204 (All. HC) wherein it was held that the law is settled that the Labour Court can interfere when the punishment imposed upon a workman is disproportionate to the proved guilt and it may modify the punishment with cogent reasons in support thereof. Further similar views taken setting aside the order of discharge or dismissal and modifying the punishment in the matters of *Bhagat Ram Vs State of Himachal Pradesh* (1993) 2 LLJ 1 (SC); *Rama Kant Misra Vs State of Uttar Pradesh* 1982 Lab IC 1790, 1972 (SC); *General Employees' Union Vs Ambassador Sky Chef*, 1996, Lab IC 299, 303-04 (Bom); *Workmen of Firestone Tyre and Rubber Co of India Pvt Ltd Vs The Management* (1973) 1 LLJ 278, 295; *Ramphal Vs State of Haryana* 1995 Lab IC 1205, 1207 (P & H) (DB) and so on. The above list of citations are illustrative and not exhaustive and there are so many judgements have been pronounced by Supreme Court and various High Courts in protecting the workman against unfair dismissal or discharge by judiciously using the power vested by virtue of Section 11A of the Industrial Disputes Act, 1947.

Suggestions

The main purpose of imposing punishment, as discussed earlier, is to correct the fault of the workman concerned by making him more alert in the future and to hold out warning to the other workmen to be careful in the discharge of their duties so that they do not expose themselves to similar punishment. This clearly indicates that to uphold the discipline in the organization, the employer has right to impose the punishment. However, if the employer exercises this power to victimize any workman or attempts to adopt unfair labour practice by imposing very severe punishment disproportionate to the misconduct committed, it will create bitterness and arouse feeling of antagonism

in the collective mind of the workmen and give rise to a feeling of class conflict. Moreover, it will create lack of trust in the minds of workmen which will widen the gap between the employer and the workmen. It will also spoil the conducive industrial relation being prevailed in the organization affecting the industrial peace, morale of the workmen and ultimately the productivity and profit of the organization which is not only harmful to the employer but also to the society. Moreover, the unfettered power of the employer imposing punishment has been put to the review of the Labour Court or Industrial Tribunal, after insertion of Section 11A of the Industrial Disputes Act, 1947. Due to this legislative reform, the unfettered power of employer dismissing or discharging the workman is being challenged before the Labour Court or Industrial Tribunal by the workman concerned or the union to which he belongs to. Also, the employer should realize that engaging the counsel to contest the dispute, investing time to prepare the grounds for the case and attending the court proceedings are highly unproductive activity from the business perspective. The employer can take tough stand only as a last resort and not in any ordinary course of dealing the disciplinary matters. In view of the above, it is suggested as under:

1. **Reformative Theory:** Adopting reformative theory of punishment will lead to smooth and conducive industrial relations. In this process, the employer should make an attempt to reform the behaviour of the individual workman concerned without any prejudice to the process of the disciplinary proceedings. In other words, the approach to be the approach of parents towards an erring or misguided child. It is very important to note that every workman will be unique pertaining to his behaviour due to his social, economical and cultural background. Synchronizing all such workmen under one umbrella will be a great and challenging task to the HR professional. Hence, when a workman misbehaves in a particular situation, the HR professional must analyze his situational behaviour and try to understand that what made him to behave in an unacceptable way in a given situation. As a first step, the HR professional should counsel and advice such erring workman and deal them very politely but at the same time firmly by sending a clear message that such recurring behaviour cannot be tolerated in future.
2. **Past Record or Conduct of the workman:** Past conduct of a workman is an important factor in coming to a decision regarding punishment to be imposed on him for his misconduct. The Gujarat High Court has observed in *Ahmedabad Municipal Transport Service Vs Mohmad Salim J Shaikh*, 2004 (3) CLR 714 (Guj HC) that for imposing punishment upon a workman pertaining to indiscipline on his part, the punishing authority has to keep in mind his socio-economy background and his past record. If the past record of the workman is not satisfactory and at the same time if the present misconduct is also grave in nature, the employer can impose serious punishment provided he gives an opportunity to the workman to offer his explanation regarding such past record. At the same time, if the past record of the workman is clean and has got very good track record, the employer should be very judicious in awarding lesser or lenient punishment than the proportionate punishment prescribed in the Certified Standing Orders because there is a probability of interference of the Labour Court or Industrial Tribunal to modify the punishment in such cases.
3. **Quantum of Punishment:** The punishment should neither be too low nor too harsh. It should be adequate and should be in proportionate to guilt of the offender. It is established law that imposing punishment for a proved act of misconduct is a matter for the punishing authority to decide and normally it should not be interfered with by industrial tribunals. The tribunal is not required to consider the propriety or adequacy of the punishments. However, where the punishment is shockingly disproportionate or no reasonable employer would ever impose in like circumstances, it may be treated that the imposition of such punishment as itself showing victimization or unfair labour practice. In other words, the imposition of punishment which is shockingly disproportionate to the act of misconduct proved against the delinquent workman itself may lead to inference of mala fides. Hence, while imposing punishment the employer must keep in mind whether the misconduct is grave, serious or light and these factors would help the employer to impose appropriate punishment.

Conclusion

To maintain a conducive industrial environment and smooth industrial relations, it is the responsibility of the employer not only to act in a neutral and reasonable manner but also make the workmen and the

union to perceive so. If the employer succeeds in this process, the decision of the employer in imposing the punishment against any workman will be supported by the union most of the time. Hence, the reasonable approach of employer will lead to building trust between the employer and workmen, boost the morale of the workmen, improve the industrial relations and sustain industrial peace. It is noteworthy to

state and conclude that it is the sole responsibility of the employer to be a reasonable, unbiased and neutral in all aspects and the workmen are also equally responsible to strengthen the hands of employer by co-operating to the organization in terms of maintaining discipline and industrial peace in order to have higher productivity and profitability for the interest of both the organization and the workmen at large.

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